

EDISON ELECTRIC INSTITUTE

60th Anniversary 19331993

August 16, 1993

FHWA Docket No. MC-92-4 Room 4232. HCC-10 Office of Chief Counsel Federal Highway Administration 400 Seventh Street, SW Washington, DC 20590-0001

FHWA-97-2180-35

Re: Federal Motor Carrier Safety Regulations: FHWA Docket No. MC-92-4

Dear Sir or Madam:

The Edison Electric Institute (EEI) and its Utility Nuclear Waste and Transportation Program (EEI/UWASTE) appreciates the opportunity to present the enclosed comments on the Notice of Proposed Rulemaking (NPRM) issued by the Federal Highway Administration (FHWA) in Docket No. MC-92-4. The NPRM proposes safety permit and vehicle inspection requirements for interstate and intrastate motor carriers transporting highway route controlled quantity radioactive materials.

EEI is the association of the nation's investor-owned electric utilities. Its members generate approximately 78% of the nation's electricity. EEI/UWASTE is a separately funded activity within EEI and represents the vast majority of electric utilities with nuclear energy programs. **EEI/UWASTE** takes actions necessary to ensure that safe, environmentally sound, publicly acceptable, and cost-effective radioactive waste management and disposal and nuclear material transportation systems are maintained and developed in a timely manner.

As shippers of highway route controlled quantity radioactive materials, EEI/UWASTE's members generally support the NPRM. With respect to the vehicle inspection and radiological monitoring aspects of the proposal, however, EEI/UWASTE urges DOT to limit the initial program to the minimum statutory requirements until DOT gains sufficient experience to determine whether there is a need for a broader inspection program. We also offer recommended changes to the temporary safety permitting provisions of the proposed rule, and suggest clarification of certain aspects of the NPRM with respect to vehicle inspection and safety permitting.

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If you have any questions concerning **EEI/UWASTE's** comments, or if you need additional information, please contact us.

Sincerely,

Steven P. Kraffy \
Director, Nuclear Waste and Transportation

SPK/jtf

Enclosure

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Edison Electric Institute Utility Nuclear Waste and Transportation Program Comments on Proposed Rule "Federal Motor Carrier Safety Regulations; Transportation of Hazardous Materials" 58 Fed. Reg. 33418 (June 17, 1993)

The Edison Electric Institute (EEI) and its Utility Nuclear Waste and Transportation Program (EEI/UWASTE) submit these comments on the Federal Highway Administration's (FHWA) proposed rule concerning safety permitting and inspection requirements for interstate and intrastate motor carriers transporting highway route controlled quantity (HRCQ) radioactive materials.

EEI is the association of the nation's investor-owned electric utilities. Its members generate approximately 78% of the nation's electricity. **EEI/UWASTE** is **a** separately funded activity within EEI and represents the vast majority of electric utilities with nuclear energy programs. **EEI/UWASTE** takes actions necessary to ensure that safe, environmentally sound, publicly acceptable, and cost-effective radioactive waste management and disposal and nuclear material transportation systems are maintained and developed in a timely manner. As shippers of HRCQ radioactive materials, **EEI/UWASTE's** members generally support the NPRM with the modifications suggested in these comments.

I. Comments

A. <u>Inspection Criteria and Radiological Monitoring</u>

Under the NPRM, safety permits issued to motor carriers transporting HRCQ radioactive materials would require each motor vehicle to be inspected and certified before each trip. We agree with **FHWA's** proposed use of the general inspection criteria contained in 49 CFR Part 396 and the more detailed inspection standards in Appendix G to Subchapter B to satisfy this requirement. The proposed inspection standards, and those incorporated by reference therein, are appropriately designed to ensure safe operation of the vehicle.

In response to the question posed by FHWA, we believe that it would be inappropriate to include mandatory radiological monitoring of the cargo as part of the inspection program covered in this rule making. A separate requirement for radiological monitoring in this rule would be redundant with existing requirements imposed by the U.S. Nuclear Regulatory Commission (NRC), DOT, and cognizant State agencies, and should not be

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included in a rule making for the purpose of establishing a motor carrier safety permit system and an inspection program for motor carriers transporting HRCQ radioactive materials.

The NRC, DOT, and cognizant State agencies promulgate and enforce regulations governing acceptable transportation radiation levels relative to the package surface, transport vehicle, and required radiological monitoring. Required monitoring typically is performed by specially trained personnel at the points of origin and destination of a shipment of HRCQ radioactive materials. FHWA has presented no evidence of a need for additional radiological monitoring. In light of the current federal **and** State controls in this area, additional monitoring of radioactive cargo would be duplicative of existing requirements, an unnecessary burden on shippers, and may not be performed correctly if the inspectors are not trained properly, because it is not part of their current duties.

When addressing issues concerning radioactive materials, FHWA must consider the NRC obligation that its licensees keep radiological exposure as low as reasonably achievable (the **ALARA** principle). In deciding whether there is a need for radiological monitoring as part of the vehicle inspection program, FHWA should balance the need for additional monitoring against the potential for increased radiological exposure of inspectors, drivers, and the general public.

EEI/UWASTE further believes that adoption of additional radiological monitoring provisions in this rulemaking would be premature. As FHWA noted with respect to expansion of the safety permitting program to cover additional hazardous materials, FHWA needs more experience with permitting and vehicle inspection requirements under a limited program before it can properly assess the need for radiological monitoring.

In addition, we believe promulgation of additional radiological monitoring requirements should await issuance of the Commercial Vehicle Safety Alliance (CVSA) recommendations on national procedures for inspecting motor vehicles transporting spent fuel and high-level radioactive waste. CVSA, working under a cooperative agreement with the U.S. Department of Energy, is developing recommendations for inspection programs for such shipments. The latest draft of CVSA's recommendations include specific radiation surveying requirements applicable to motor vehicles transporting such materials. The CVSA's work is progressing as States and other interested persons provide comments on the draft recommendations. Once CVSA finalizes its recommendations, it is anticipated that all States will adopt them, and these recommendations will then govern shipments of spent fuel and high-level radioactive waste. EEI/UWASTE encourages FHWA to defer consideration of the need for additional radiological monitoring requirements until the CVSA has issued its final report.

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B. <u>Extension of Permitting and Inspection Proaram</u>

According to the preamble, once the rule is finalized, FHWA will analyze data collected on the safety permitting and inspection programs to determine whether to extend those programs to cover other classes and quantities of hazardous materials. 58 Fed. Reg. 33421. **EEI/UWASTE** cautions against extending the permitting and inspection programs unless and until DOT gathers substantial evidence showing that such extension would significantly enhance transportation safety.

Despite the anticipated use of existing FHWA programs, forms, and procedures, we believe that compliance with the proposed programs would impose additional administrative burdens on affected motor carriers and on FHWA. In recognition of these burdens, the Department of Transportation stated, "[w]e believe that it is essential to begin with a limited permitting program that is administratively practicable, and then consider expanding the program as determined necessary. [Emphasis added.] See, H.R. Rep. No. 444, 101st Cong., 2d Sess. 66-67 (1990). In light of the associated administrative burdens and the general principle that regulations should not be promulgated absent a demonstrated need, the scope of the rule should not be extended beyond the minimum statutory requirements unless FHWA collects sufficient data demonstrating substantial safety benefits likely to result from broader safety permitting and vehicle inspection programs.

C. **Temporary** Safety Permits

If the rule is adopted as proposed, FHWA would have the discretion to issue a temporary safety permit to an unrated motor carrier pending a safety fitness determination. To be eligible for a temporary safety permit, the motor carrier would have to certify in its permit application that it is operating in full compliance with the applicable Federal Motor Carrier Safety Regulations or comparable State regulations. Under the proposal, a temporary permit would remain in effect for up to 120 days from the date of issuance or until a safety rating is assigned, whichever occurs first.

As currently structured, a temporary safety permit would expire 120 days from issuance if FHWA failed to assign a safety rating to the motor carrier within that time period. In the case of an unrated motor carrier who has complied with all safety permit application requirements (including self-certification of compliance with applicable safety and financial responsibility laws), **EEI/UWASTE** believes that the carrier's temporary permit should not lapse due to **FHWA's** administrative inability to issue a safety rating in time. It would be unfair to subject carriers who are trying to comply with the permitting requirements to the hardship accompanying loss of a temporary safety permit, simply because **FHWA's** administrative resources are limited.

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To address this issue, **EEI/UWASTE** suggests that FHWA amend the temporary permitting provisions in the NPRM to state that a motor carrier's temporary permit remains effective until FHWA issues a safety rating to that carrier or revokes the temporary permit for cause. This would provide the agency the time it needs to review and issue safety ratings for unrated motor carriers, without unduly burdening such carriers or posing a risk to public safety. Those carriers holding temporary permits will have sworn in their applications that they are in full compliance with applicable federal or State safety requirements. FHWA is authorized to fine a motor carrier for false certifications on its permit application. See proposed 49 CFR § 397.53. In addition, FHWA would retain authority to revoke a carrier's temporary permit if any concerns about the carrier's operations arise.

D. Consolidation of Safety Permitting and Registration Programs

As noted in the preamble, a separate rulemaking (Docket No. HM-208) initiated under the Hazardous Materials Transportation Uniform Safety Act Amendments of 1990, requires motor carriers transporting HRCQ radioactive materials to register annually with DOT's Research and Special Programs Administration (RSPA). This NPRM would require those same motor carriers to obtain a safety permit from FHWA every three years. In light of the confusion likely to arise among carriers who must register with one office every year and apply for a permit from another every three years, **EEI/UWASTE** suggests that RSPA and FHWA consolidate the registration and safety permitting programs in one office that would administer the same **3-year** or other appropriate renewal period for both programs. Streamlining of the federal motor carrier requirements would increase compliance with both programs and would ease the administrative burdens the proposed system places on DOT.

E. Specific Reauests for Clarification

EEI/UWASTE seeks clarification of the two aspects of the proposed inspection standards. First, the proposed rule would incorporate the standards found in Appendix G to Subpart B. In addition to those standards, however, the preamble refers to the potential use of "a Level 1 North American Uniform Driver/Vehicle Inspection." 58 <u>Fed. Reg.</u> 33419. Because the intended relationship between the latter document and Appendix G is unclear, and reference to both could be interpreted to require compliance with both sets of standards, FHWA should describe the specific inspection requirements proposed in this rulemaking more clearly.

Second, throughout the NPRM, FHWA uses the terms "motor vehicle" and "commercial motor vehicle." "Commercial motor vehicle" is not defined in the proposal. Although the agency may be using these terms interchangeably, different terms imply what may be an

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unintended distinction in meaning. Therefore, **EEI/UWASTE** requests **a** definition of the term "commercial motor vehicle" and clarification of its relationship, if any, to the term "motor vehicle."

II. Conclusion

Although **EEI/UWASTE** generally supports the NPRM, we encourage FHWA to adopt the modifications discussed in these comments. Primarily, **EEI/UWASTE** is concerned about the scope of the proposed vehicle inspection requirements and the reference to radiological monitoring. For the reasons set forth above, **EEI/UWASTE** opposes adoption of radiological monitoring requirements by FHWA unless and until the need for such requirements is clearly demonstrated. Similarly, **EEI/UWASTE** agrees with DOT's view that the safety permitting and inspection programs should be limited to the designated high risk materials covered by the statute and the NPRM until FHWA gathers sufficient data supporting expansion of the program to other hazardous materials.

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